

1 UNITED STATES COURT OF APPEALS
2 FOR THE NINTH CIRCUIT
3

4 PAUL E. DAVIS,

5 Plaintiff-Appellant,

6 v.

7 T. ROBICHAUD, LVMPD, *et al.*,

8 Defendants-Appellees.
9

No. 15-15291

D.C. No. 2:14-cv-00679-APG-VCF
U.S. District Court for Nevada, Las Vegas

RESPONSE TO REFERRAL NOTICE

10 Plaintiff Paul E. Davis appealed to the United States Court of Appeals for the Ninth Circuit
11 from my January 20, 2015 Order dismissing his lawsuit. The Ninth Circuit referred to me the
12 question whether in forma pauperis status should continue for the appeal or whether the appeal is
13 frivolous or taken in bad faith.

14 As set forth in my Order, Davis's claims against defendant Amber Craig are barred by the
15 doctrine of prosecutorial immunity. *See Hartman v. Moore*, 547 U.S. 250, 262 (2006); *Botello v.*
16 *Gammick*, 413 F.3d 971, 975 (9th Cir. 2005). Therefore, I see no basis for his appeal on that claim.

17 Davis's claims against the other defendants are barred by *Heck v. Humphrey*, 512 U.S. 477,
18 487 (1994), because a judgment in Davis's favor "would necessarily imply the invalidity of his
19 conviction or sentence. . . ." Davis's convictions have not been set aside, and therefore he cannot
20 prevail on his claims. Therefore, I see no basis for his appeal on those claims.

21 For the foregoing reasons, I believe the appeal is frivolous or taken in bad faith, and in
22 forma pauperis status should not continue for the appeal.

23 Dated this 13th day of March, 2015.

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25 ANDREW P. GORDON
26 UNITED STATES DISTRICT JUDGE
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